

ANN BAVENDER\*  
ANNE GOODWIN CRUMP\*  
VINCENT J. CURTIS, JR.  
RICHARD J. ESTEVEZ  
PAUL J. FELDMAN  
ERIC FISHMAN  
RICHARD HILDRETH  
FRANK R. JAZZO  
ANDREW S. KERSTING\*  
KATHRYN A. KLEIMAN  
EUGENE M. LAWSON, JR.  
HARRY C. MARTIN  
J. TODD METCALF\*  
GEORGE PETRUTSAS  
LEONARD R. RAISH  
JAMES P. RILEY  
KATHLEEN VICTORY  
HOWARD M. WEISS  
\* NOT ADMITTED IN VIRGINIA

FLETCHER, HEALD & HILDRETH

ATTORNEYS AT LAW

11th FLOOR, 1300 NORTH 17th STREET

ROSSLYN, VIRGINIA 22209-3801

(703) 812-0400

TELECOPIER

(703) 812-0486

INTERNET

office@fhh-telcomlaw.com

DOCKET FILE COPY ORIGINAL

FRANK U. FLETCHER  
(1939-1985)  
ROBERT L. HEALD  
(1933-1983)  
PAUL D.P. SPEARMAN  
(1936-1982)  
FRANK ROBERSON  
(1936-1981)  
RUSSELL ROWELL  
(1948-1977)

RETIRED  
EDWARD F. KENEHAN

CONSULTANT FOR INTERNATIONAL AND  
INTERGOVERNMENTAL AFFAIRS

SHELDON J. KRYS  
U. S. AMBASSADOR (ret.)

OF COUNSEL  
EDWARD A. CAINE\*

WRITER'S NUMBER  
(703) 812-

RECEIVED

JUL - 8 1997

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

0474

July 8, 1997

**BY HAND DELIVERY**

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, DC 20554

Re: MM Docket No. 97-107; RM-9023  
Potts Camp and Saltillo, Mississippi

Dear Mr. Caton:

Transmitted herewith on behalf of Olvie E. Sisk, licensee of Station WCNA(FM), Potts Camp, Mississippi, are an original and four copies of his "Response to Supplement to Comments and Counterproposal of Broadcasters & Publishers, Inc.," in the above-referenced proceeding.

Should any questions arise concerning this matter, please communicate directly with this office.

Very truly yours,

FLETCHER, HEALD & HILDRETH, P.L.C.



Andrew S. Kersting  
Counsel for Olvie E. Sisk

Enclosures

1-2 Pages rec'd  
ENCLOSURE *OK*

BEFORE THE  
**Federal Communications Commission**

WASHINGTON, D.C. 20554

DOCKET FILE COPY ORIGINAL  
**RECEIVED**

JUL - 8 1997

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

Amendment of Section 73.202(b), )  
Table of Allotments, )  
FM Broadcast Stations )  
(Potts Camp and Saltillo, Mississippi) )

MM Docket No. 97-107  
RM-9023

To: Chief, Allocations Branch

**RESPONSE TO SUPPLEMENT TO  
COMMENTS AND COUNTERPROPOSAL OF  
BROADCASTERS & PUBLISHERS, INC.**

Olvie E. Sisk ("Sisk"), licensee of Station WCNA(FM), Potts Camp, Mississippi, hereby submits his response to the "Supplement to Comments and Counterproposal of Broadcasters & Publishers, Inc. ("Supplemental Comments"), filed June 26, 1997, by Broadcasters & Publishers, Inc. ("B&P"). In support of this response, the following is stated:<sup>1</sup>

In its Supplemental Comments, B&P claims that adoption of its counterproposal to allot Channel 275C3 to Saltillo, Mississippi, as the community's first local service is not precluded by the procedural policy set forth in *Cut and Shoot, Texas*, 11 FCC Rcd 16383 (Policy and Rules Div. 1996). Specifically, B&P claims that the Commission's policy of not accepting rulemaking petitions contingent on the licensing of facilities set forth in an outstanding construction permit does not apply where "a final Commission action in a rulemaking proceeding has modified a license or construction

---

<sup>1</sup> In an effort to provide the Commission with the most up-to-date information concerning the community of Potts Camp, Mississippi, Sisk notes that the last remaining traffic light in Potts Camp has been removed. According to the office of Zack Stewart, Commissioner of the Tennessee State Highway Commission, the signal light was removed due to low traffic count.

permit to specify *operation on another channel*.” Supplemental Comments, p. 2 (emphasis added), citing *Cut and Shoot*, 11 FCC Rcd at 16384, n.3.

B&P’s attempt to distinguish its counterproposal from application of the procedural policy set forth in *Cut and Shoot* is unavailing. In *Cut and Shoot*, the petitioner filed a rulemaking petition seeking the allotment of Channel 235A to Cut and Shoot, Texas. Although the petitioner’s proposal was fully spaced to an outstanding construction permit for Station KYKR(FM), Beaumont, Texas, the Chief, Policy and Rules Division (“Chief”), affirmed the staff’s return of the rulemaking petition as being technically unacceptable because it was short-spaced to the licensed site of Station KYKR. In doing so, the Chief noted that Section 73.208 of its rules specifies the applicable reference point to be used in determining FM minimum separations as “authorized” transmitter sites. 11 FCC Rcd at 16384, n.2, citing 47 CFR §208(a)(1)(i). The Chief stated that, “[i]n this situation, both the licensed site and the construction permit site represent authorized sites and a rulemaking proponent *must meet the separation requirements for both sites*. *Id.* (emphasis added). The Chief also noted, however, that the proponent could refile its petition for rulemaking once the facilities authorized in Station KYKR’s construction permit were constructed and licensed. 11 FCC Rcd at 16384.

B&P’s argument that the *Cut & Shoot* policy does not apply to its proposal to allot Channel 275C3 to Saltillo is based on the language in footnote 3 of the decision which states as follows:

In adopting this procedural policy, we stress that such a policy would not be applicable in situations in which a final Commission action in a rulemaking proceeding has modified a license or construction permit *to specify operation on another channel*. In those situations, a rulemaking proponent need only protect the authorization, as modified.

11 FCC Rcd at 16384, n.3 (emphasis added).

B&P claims that the *Cut and Shoot* policy does not apply to its counterproposal because the change in community of license of Station WWKZ(FM) from New Albany to Como, Mississippi, resulted from “a final Commission action in a rulemaking proceeding that modified the license of Station WWKZ to specify a different community of license.” Supplemental Comments, p. 2 (emphasis added). B&P’s reliance upon footnote 3 in an attempt to equate a mere channel change with a change in community of license is wholly untenable. Indeed, unlike a change in channels, which involves no change in the location of a station’s transmitter, B&P’s change in community of license from New Albany to Como involved a move of WWKZ’s transmitter to a new site. *Cut and Shoot* makes clear that the applicable reference point to be used in determining the FM minimum separations is “authorized” transmitter sites. 47 CFR §73.208(a)(1)(i). Thus, because both the licensed site for WWKZ and the construction permit site represent “authorized” transmitter sites under Section 73.208(a)(1)(i) of the rules, B&P is required to meet the separation requirements for both sites. *Cut and Shoot*, 11 FCC Rcd at 16384, n.2. As demonstrated in Sisk’s Reply Comments, filed June 3, 1997, B&P’s proposal to allot Channel 275C3 to Saltillo is short-spaced to WWKZ’s currently licensed site. Therefore, B&P’s proposal violates Section 73.208 of the rules as well as the minimum separation provisions, and should not be considered. *Id.* at 16384.

Furthermore, despite B&P’s arguments to the contrary, the rationale behind the *Cut and Shoot* policy of preserving the resources of the Commission and the parties to rulemaking proceedings applies with equal force to B&P’s proposal. As the Commission noted in *Cut and Shoot*, the facilities set forth in construction permits often are not built and licensed in a timely manner. *Id.* In this case, the record establishes that B&P has not even commenced construction of WWKZ’s new facility at Como, Mississippi. See Sisk Reply Comments, p. 5, ¶10. Thus,

consideration of B&P's proposal would cause an inordinate delay in the resolution of the instant rulemaking proceeding because it will be some time before the "contingent" WWKZ construction permit is licensed. As the Commission acknowledged in *Cut and Shoot*, the resulting delay in adopting a Report and Order would be unfair to the other parties in the proceeding, such as Sisk, whose proposal is not contingent on the licensing of facilities set forth in an outstanding construction permit. *Cut and Shoot*, 11 FCC Rcd at 16384.

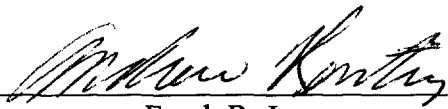
### Conclusion

As demonstrated above, B&P's proposal, just as the rulemaking petition in *Cut and Shoot*, violates Sections 73.207 and 73.208 of the Commission's rules and there is no countervailing public interest sufficient to warrant consideration of the proposal. Therefore, the Commission should follow the procedural policy announced in *Cut and Shoot* and return B&P's counterproposal.

WHEREFORE, in light of the foregoing, Olvie E. Sisk respectfully requests that the Commission (i) return the "Comments and Counterproposal of Broadcasters & Publishers, Inc.", filed May 19, 1997, (ii) reallocate Channel 240C3 from Potts Camp to Saltillo, Mississippi, and (iii) modify the license for Station WCNA(FM) to specify operation at Saltillo, Mississippi.

Respectfully submitted,

OLVIE E. SISK

By:   
Frank R. Jazzo  
Andrew S. Kersting

Its Counsel

Fletcher, Heald & Hildreth, P.L.C.  
1300 N. Seventeenth Street, 11th Floor  
Rosslyn, Virginia 22209  
(703) 812-0400

July 8, 1997

c:\ask...jazzo\rm\saltillo.res

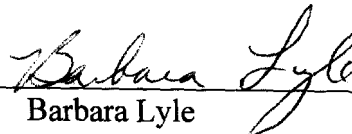
**CERTIFICATE OF SERVICE**

I, Barbara Lyle, a secretary in the law firm of Fletcher, Heald & Hildreth, P.L.C., hereby certify that on this 8th day of July, 1997, copies of the foregoing "Response to Supplement to Comments and Counterproposal of Broadcasters & Publishers, Inc." were hand delivered or mailed first-class, postage prepaid, to the following:

John A. Karousos, Chief\*  
Allocations Branch  
Policy and Rules Division  
Mass Media Bureau  
Federal Communications Commission  
2000 M Street, N.W., Room 565  
Washington, DC 20554

Ms. Pam Blumenthal\*  
Allocations Branch  
Policy and Rules Division  
Mass Media Bureau  
Federal Communications Commission  
2000 M Street, N.W., Room 565  
Washington, DC 20554

Erwin G. Krasnow, Esquire  
Verner, Liipfert, Bernhard, McPherson  
and Hand, Chartered  
Suite 700  
901 15th Street, N.W.  
Washington, DC 20005  
Counsel for Broadcasters & Publishers, Inc.

  
Barbara Lyle

\* Hand Delivered